

Remarks

In view of the following remarks, Applicant respectfully requests reconsideration of the claims pending in the instant application. Claims 29-61 are pending. Claims 29-61 stand rejected. Below, Applicant addresses each of the objections and rejections in the order in which they appear in the Office Action mailed February, 7, 2003.

The Examiner objects to the disclosure because the Examiner believes that the specification contains an incorrect description of murine LERK-6. The basis for this conclusion stems from an error in the 1.131 Declaration of Cerretti. Specifically, the Cerretti Declaration, at page 6 first full paragraph, indicates that the "DNA encoding the first 5 amino acids shown in Appendix E is derived from the sequencing vector, as indicated by the mark between the fifth amino acid (Arg) and the sixth amino acid (Ala)." In fact, the Cerretti Declaration misstates the DNA derived from the sequencing vector. This sentence of the Cerretti Declaration should read "DNA encoding the first 3 amino acids shown in Appendix E is derived from the sequencing vector, as indicated by the mark between the ninth nucleotide (G of CGG, which encodes Arg) and the tenth nucleotide (G of GCC which encodes Ala)". The first nine nucleotides encode the first three amino acids indicated in the first amino acid sequence of Appendix E. Thus the first THREE amino acids, not the first five amino acids, are part of the sequencing vector. It should be noted that the polypeptide of SEQ ID NO:2 is 184 amino acids and with ALAARG included in the polypeptide sequence the polypeptide is 184 amino acids. So, the first 7 amino acids describing the LERK-6 shown in Appendix E are AlaArgAlaAsnAlaAspArg. These amino acids correspond to the same first 7 amino acids of SEQ ID NO:2. In order to correct the record, Dr. Cerretti has corrected and re-executed his 1.131 Declaration, a copy of which accompanies this paper. The sequence information in the 1.131 Declaration and SEQ ID NO:1 and SEQ ID NO:2 of the specification do not contradict each other and Applicant respectfully requests that this objection be withdrawn.

The Examiner rejects claims 58-60 under 35 U.S.C. 112, first paragraph, because the Examiner believes that the disclosure is not enabling for claims that are drawn to polypeptides that are at least 80% identical to the polypeptide of SEQ ID NO:2. In order to more specifically describe the invention of these claims and to overcome the rejection, Applicant amends claims 58-60 to specify that the claimed DNAs encode polypeptides that bind hek/elk. In view of this amendment, Applicant believes that this rejection is overcome and respectfully requests that this rejection be withdrawn.

The Examiner further rejects claims 29-57 and 61 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that claims 29-57 are generally drawn to an isolated molecule encoding LERK-6 polypeptide the binds hek/elk, wherein said polypeptide comprises amino acids of SEQ ID NO:2 and recombinant

phage γ gt10 vector clone. The basis for the indefiniteness rejection appears to be that the Examiner believes SEQ ID NO:2 describes a chimeric protein, not murine LERK-6 polypeptide. Applicant respectfully submits that any belief that SEQ ID NO:2 is a chimeric protein is removed by the corrected 1.131 Cerretti Declaration and respectfully requests that this rejection be withdrawn.

The Examiner rejects claim 61 as being indefinite because it is drawn to various DNAs that hybridize to SEQ ID NO:1 under highly stringent conditions and the Examiner asserts that without specifically reciting conditions the claim fails to define the metes and bounds of the DNAs. Notwithstanding Applicant's view that hybridization conditions, whether it be mild, moderate, high, severe, etc, are generally viewed within the art to be within certain definite temperature and solvent ranges, in order to overcome this rejection Applicant amends claim 61 to specifically recite hybridization conditions. In view of this amendment, Applicant respectfully requests that this rejection be withdrawn.

Finally, the Examiner rejects claims 29-52 and 58-61 under 35 U.S.C. 102(e) as being anticipated by Flanagan et al. U.S. Patent No. 5,795,734 ('734 patent). The Examiner asserts that Flanagan's SEQ ID NO:2 is 100% identical to SEQ ID NO:2 of the instant claims. Flanagan's '734 patent presents claims to DNA encoding SEQ ID NO:2 and Applicant presents claims to DNA encoding SEQ ID NO:2. Since Applicant's claims have been pending since 1994 and Applicant has made a prima facie showing that Applicant is entitled to judgment relative to patentee (see Cerretti 1.131 Declaration), Applicant requests that the Examiner indicate the present claims are allowable. Pursuant to 37 C.F.R. 607, Applicant may seek to request an interference with the '734 patent.

In view of the foregoing remarks and amendment Applicant respectfully submits that the claims in this application are in condition for allowance and a notice to the effect is respectfully requested.

Respectfully submitted,


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Date: February 7, 2003

Signed: Nanci M. Kertson
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